



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

May 4, 2011

Mr. Scott A. Durfee  
Assistant General Counsel  
Harris County District Attorney  
1201 Franklin, Suite 600  
Houston, Texas 77002-1901

OR2011-06085

Dear Mr. Durfee:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 416322.

The Harris County District Attorney's Office (the "district attorney") received a request for (1) correspondence with employees of the Lone Star College Breath Alcohol Testing Program, a named individual, the Texas Department of Public Safety, and the Jersey City Police Department regarding invalidation of breath tests performed on a specified instrument during a specified time period; (2) all *Brady* notices or disclosures made to defense counsel by the district attorney regarding the invalidation of breath tests performed on the above instrument; and (3) any e-mails related to the *Brady* notices referenced above. You state you will release some of the requested information. You claim portions of the submitted information are excepted from disclosure under section 552.108 of the Government Code.<sup>1</sup> We have considered the exception you claim and reviewed the submitted representative sample of information.

You seek to withhold some of the submitted e-mails under section 552.108 of the Government Code. Section 552.108 provides in part:

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<sup>1</sup>Although you also initially raise section 552.103 of the Government Code as an exception to disclosure, you have provided no arguments regarding the applicability of this section. Accordingly, we find the district attorney has waived its claim under this exception. See Gov't Code § 552.301(e) (governmental body must provide comments explaining why exceptions raised should apply to information requested).

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from [required public disclosure] if:

...

(4) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [required public disclosure] if:

...

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

Gov't Code § 552.108(a)(4), (b)(3). A governmental body that claims an exception to disclosure under section 552.108 must reasonably explain how and why this exception is applicable to the information the governmental body seeks to withhold. *See id.* §§ 552.108, .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986). You contend the e-mails at issue reflect the mental impressions and legal reasoning of attorneys representing the State of Texas. You state this information was created in anticipation of or in the course of preparing for criminal litigation. Upon review, we find the information at issue was either prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation or reflects the mental processes or legal reasoning of an attorney representing the state. Therefore, the district attorney may withhold the information at issue under sections 552.108(a)(4) and 552.108(b)(3) of the Government Code.<sup>2</sup>

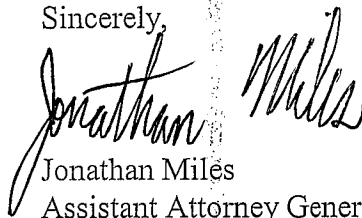
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<sup>2</sup>As our ruling is dispositive, we need not address your remaining arguments.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Miles", is written over the typed name.

Jonathan Miles  
Assistant Attorney General  
Open Records Division

JM/em

Ref: ID# 416322

Enc. Submitted documents

c: Requestor  
(w/o enclosures)